



Costs Decision

Site visit made on 30 August 2023

by S M Holden BSc (Hons) MSc CEng MICE CTPP FCIHT MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 September 2023

Costs application in relation to Appeal Ref: APP/K3605/W/22/3313344 34 Queens Road, Weybridge, Surrey KT13 0AU

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Elmbridge Borough Council for a partial award of costs against Rushmon Homes.
 - The appeal was against the refusal of planning permission for the construction of 10 apartments with associated parking, landscaping, refuse and cycle storage areas following demolition of existing house and garage.
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Decision

1. The application for costs is refused.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The Council's sole reason for the application for costs is that the appellant introduced fresh and substantial new evidence at a late stage relating to the viability of the scheme. As this was only one of the three reasons that the application was refused, I have considered the application to be for a partial award of costs.
4. The issue of the scheme's viability, and whether it could contribute to the provision of affordable housing, was the subject of assessment and negotiation during the Council's consideration of the proposal. Many of the assumptions within the assessment were agreed, but not the Benchmark Land Value (BLV). However, the appellant continued to contend that their approach was justified, in which case the scheme was borderline in terms of its viability and no contribution towards affordable housing was required.
5. The appellant offered one First Home as a compromise, but the Council continued to seek a financial contribution in line with its view that the scheme could provide a surplus exceeding £100k. From what I have read, negotiations were at an impasse and, as there were also other objections to the scheme, the Council refused the application. However, it did so without providing the appellant with an opportunity to conclude a planning obligation. Given the preceding circumstances, I do not consider that amounted to unreasonable behaviour as there was no evidence to suggest that the appellant was willing to make a financial contribution that would have satisfied the Council.

6. Since the appeal was submitted, the economy has experienced on-going uncertainties, including increased interest rates and rising building costs. The appellant therefore chose to submit an updated viability assessment with the appeal to add weight to their contention that the scheme could not support an affordable housing contribution. The Council considered this to be fresh evidence and sought the costs of undertaking a review of it from the appellant. This request was refused. In view of the rapidly changing economic circumstances, I do not consider it was unreasonable for the appellant to submit updated information with the appeal. As they had already paid the fee for the original independent review, neither was it unreasonable to refuse to pay an additional fee as part of the appeal proceedings.
7. The Council's consultants were already familiar with the previous assessments undertaken prior to the determination of the application. Amending the input assumptions or commenting on the changes to them by the appellant was not an onerous task. The Council could have chosen to defend its decision based on the previous analysis. However, it was decided that it would be preferable to do so by undertaking a review of the updated information. It was therefore part of the appeal proceedings in which parties are normally expected to meet their own expenses. I have taken the updated views of both parties on the viability of the scheme into account in reaching my decision on the appeal scheme.
8. I therefore do not consider that unreasonable behaviour by the appellant has resulted in unnecessary expense for the Council. For this reason, the partial award of costs is not justified.

S M Holden

INSPECTOR